

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No. 5:13-CV-00527-F

U.S. TOBACCO COOPERATIVE INC., U.S.)
FLUE-CURED TOBACCO GROWERS, INC.,)
and BIG SOUTH DISTRIBUTION, LLC,)

Plaintiffs,)

v.)

BIG SOUTH WHOLESALE OF)
VIRGINIA, LLC, d/b/a BIG SKY)
INTERNATIONAL, BIG SOUTH)
WHOLESALE, LLC, UNIVERSAL)
SERVICES FIRST CONSULTING, A/K/A)
UNIVERSAL SERVICES CONSULTING)
GROUP, JASON CARPENTER,)
CHRISTOPHER SMALL, EMORY STEPHEN)
DANIEL, ALBERT M. JOHNSON, and other)
unnamed co-conspirators,)

Defendants,)

UNITED STATES OF AMERICA,)

Intervenor.)

**PLAINTIFFS' RESPONSE IN
SUPPORT OF MR. APUZZO'S
MOTION FOR LEAVE TO
INTERVENE**

Plaintiffs U.S. Tobacco Cooperative Inc. ("USTC"), U.S. Flue-Cured Tobacco Growers, Inc. ("USFC"), and Big South Distribution, LLC ("BSD") (collectively "Plaintiffs"), respectfully file this Response in Support of the Motion for Leave to Intervene by Mr. Matthew Apuzzo. ECF No. 599.

I. ARGUMENT

The position of [REDACTED] and Defendants Big South Wholesale of Virginia, LLC, d/b/a/ Big Sky International, Big South Wholesale, LLC, Jason Carpenter, and Christopher Small

(collectively “Defendants”) that this litigation should continue to be conducted under seal is flatly inconsistent with the time-honored presumption of openness governing court proceedings and is prejudicial to Plaintiffs. *See* ECF No. 522 at 2. This case has changed dramatically since the Court entered the Sealed Amendment to the Protective Order (“Sealed Amendment”). The Defendants have now asserted that they should not be held liable for their unlawful conduct because [REDACTED]

[REDACTED]. Indeed, Defendants claim that they [REDACTED]. Moreover, the testimony of [REDACTED]

[REDACTED] *See* ECF No. 611 at 5-6 (outlining this misconduct). Given that these matters directly involve improper activity of [REDACTED], they are of significant interest to the public, including the more than 800 farmers who were victimized as a result of Defendants’ conduct.

[REDACTED] supports an open trial, as do Plaintiffs, and Defendants will attempt to use [REDACTED] at trial to defend against the allegations in this case. Defendants and [REDACTED] should not be permitted to conceal Defendants’ misconduct from the public leading up to trial, all the while intending to reveal [REDACTED] in an effort to excuse their fraudulent acts. This smacks of obvious gamesmanship which should not be countenanced by the Court. Indeed, if the Court permits [REDACTED], the entire basis for the Sealed Amendment will

become immediately moot. There is simply no legal justification for continuing to seal matters that almost certainly will be made public—by the very party seeking to keep things sealed—in less than two months when this case goes to trial. And legally, if the First Amendment provides the public a right of access to the trial, it also provides the public a right of access to dispositive filings (such as the [REDACTED] and motions for summary judgment), which are governed by the same standard. *See Rushford v. New Yorker Magazine*, 846 F.2d 249, 252-53 (4th Cir. 1988) (the First Amendment right of access applies to trial proceedings and documents and proceedings that relate to dispositive motions).

To the extent there was previously uncertainty whether Defendants' multi-million dollar fraud on tobacco farmers and misconduct by [REDACTED] were of public interest, Mr. Apuzzo's motion to intervene definitively answers that question. Indeed, in its order granting Defendants' motion to seal the August 24, 2016 evidentiary hearing, this Court [REDACTED]. ECF No. 589 at 2 n.1. Mr. Apuzzo's motion provides a further compelling reason to grant Plaintiffs' Motion to Unseal the Record and Modify the Sealed Amendment to the Protective Order.

II. CONCLUSION

Accordingly, Plaintiffs respectfully request that the Court grant Mr. Apuzzo's Motion for Leave to Intervene.

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CERTIFICATE OF SERVICE

I, Thomas A. Farr, hereby certify that I have this day electronically filed the foregoing Plaintiffs' Response in Support of Mr. Apuzzo's Motion for Leave to Intervene with the Clerk of Court using the CM/ECF system which will send notice of such filing to:

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This 12th day of September, 2016.

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